

Appl. No.: 10/645,863
Response to Office Communication dated January 26, 2005

REMARKS

As an initial matter, Applicants wish to thank the Examiner and his SPE for courtesies extended during the in person/telephonic interview of February 28, 2005. During the interview, the claim rejections and objections in the Office communication of January 26, 2005, were discussed. In that Office communication, Claims 1, 3, 5, 7-10, 14-20, 22-31, 38, 41 and 42 were rejected and an objection was directed towards claim 16.

Without prejudice or disclaimer, independent claim 1 is herein amended; claims 16 and 28 are canceled; and claims 5, 12, 13 and 43 are withdrawn as directed to non-elected species. With the entry of this amendment, claims 1, 3, 7-10, 14-15, 17-20, 22-27, 29-31, 38, 41 and 42 are pending. Applicants request reconsideration and allowance of the pending claims.

Objection of Claim 16

Claim 16 is rejected under 37 CFR 1.75 as allegedly being a substantive duplicate of claim 15. Action at page 3. Without prejudice or disclaimer and without acquiescence, Applicants have canceled claim 16. Applicants respectfully submit that the claim objection is rendered moot in light of this cancellation.

Rejections Under 35 U.S.C. 112, first paragraph

Claims 1, 3, 5, 7-10, 14-20, 22-31, 38, 41 and 42 are rejected under 35 USC 112, first paragraph, as allegedly failing to comply with the written description requirement. Action at page 3. Independent claim 1 is rejected as allegedly reciting matter not supported by the originally-filed specification and claims. Specifically, the phrases "to identify said phenotypic state with a disposable device" and "selling said disposable device" allegedly lacked written description support. Action at pages 4-5.

Without prejudice or disclaimer and without acquiescence to the Office's new matter characterization, Applicants have amended claim 1 as indicated in the Listing of Claims. Specifically, Applicants have cancelled the phrases "to identify said phenotypic state with a disposable device" and "selling said disposable device," obviating any issue of new matter.